Supreme Court of the United States

October Term, 1957

No. 3

FRANCISCO ROMERO,

Petitioner,

against

INTERNATIONAL TERMINAL OPERATING CO., COMPANIA TRASATLANTICA, also known as SPANISH LINE, and GARCIA AND DIAZ, INC. and QUIN LUMBER CO., INC.,

Respondents.

BRIEF OF SKIBSFARTENS ARBEIDSGIVERFORENING (Norwegian Shipping Federation) *and* SVERIGES REDAREFORENING (Swedish Shipowner's Association) AS *AMICI CURIAE*

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No. 322

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Having obtained and filed consent of counsel for the petitioner and counsel for the respondents, Skibsfartens Arbeidsgiverforening (Norwegian Shipping Federation) and Sveriges Redareforening (Swedish Shipowner's Association) respectfully submit this brief as *amici curiae*.

Jurisdiction

The opinion of the United States Court of Appeals for the Second Circuit appears on pages 47 and 48 of the Appendix to the Petition and is reported at 244 F. 2d 409. The petition for writ of certiorari was filed July 29, 1957, and was granted on October 14, 1957. The jurisdiction of this Court is conferred by Title 28 U. S. Code § 1254.

Interest of *Amici Curiae*

Skibsfartens Arbeidsgiverforening (Norwegian Shipping Federation) is an association of Norwegian shipping companies engaged in ocean commerce throughout the world. Its home office is in Oslo, Norway. Its several hundred members operate vessels totalling some 13 million deadweight tons and include practically all the Norwegian companies owning ships trading in foreign commerce.

Sveriges Redareforening (Swedish Shipowner's Association) is an association of Swedish shipping companies engaged in ocean commerce around the globe. Its home office is in Gothenberg, Sweden, and the 190 or so members operate vessels totaling some 4 million deadweight tons.

The members of *amici curiae* are engaged in worldwide foreign international transportation involving calling at many different foreign ports in many different countries. *Amici curiae* urge this Court to consider the practical difficulty of applying the law of each particular port rather than the law of the flag to a seamen's injury claims against the owners of the vessel. This would, *amici* urge, constitute a reversal of the law of the United States as well as being a serious hindrance to international trade.

Amici curiae here are appearing only as to Question 1 as set out on page 2 of petitioner's brief and on the broad question of whether a seaman injured on board ship in connection with the ship's normal operation may maintain an action against the owners of the vessel under the law of the port at which the vessel may happen to be without regard to the rules established by the law of the flag of that vessel.

Amici curiae are not concerned either with the various procedural points involved in this case or with the question of possible liability of International, the stevedores, Quinn Lumber Co., the carpenters, or Garcia & Diaz, the agents. Nor are *amici curiae* concerned with whether the fair value

of necessary hospital care, which was admittedly due Romero, is to be figured only to July 6, 1954 (Appellant's Appendix 107a; Appellee's Appendix 24a-25a).

Statement of the Facts

The petitioner, Francisco Romero, is a citizen and resident of Spain. Romero had signed articles in Spain to serve on board the Spanish s/s Guadalupe for a round trip voyage. The s/s Guadalupe was a motorship, flying the Spanish flag, registered in Spain with Barcelona as its home port and for the purpose of this brief was operated by petitioner, Compania Trasatlantica, also known as Spanish Line. According to the terms of the shipping articles which Romero signed, the terms and conditions of employment were to be controlled by the Spanish Codes of Laws regulating Commerce and Labor, and other regulations in force. The Guadalupe sailed from Spain with Romero on board and after calling at American and Mexican ports returned to Spain. No further articles were signed by Romero, but he continued to sail on board the Guadalupe at the same wages and under the same conditions as heretofore. On the second voyage on May 12, 1954, while the Guadalupe was calling at Hoboken, New Jersey, Romero was injured while assisting in discharging of cargo and baggage. Also engaged on the vessel at this time were stevedores, International Terminal Operating Co., and carpenters, Quin Lumber Co., Inc. From the record it appeared that International was engaged in discharging the cargo and baggage while Quinn Lumber Co., were engaged in doing some carpentry work in connection with the installation of fittings for the prospective carriage of a partial cargo of grain from Hoboken to Spain. Also during the stay at New York Garcia & Diaz, Inc., an American corporation, acted as the ship's agents. Following his accident Romero was hospitalized in Hoboken

where it was found necessary to amputate his left leg. The surgeon who performed the operation was paid by respondent, Spanish Line, and respondent Spanish Line has also acknowledged the responsibility for fair hospital bill. Unfortunately, due to some dispute as to the exact amount of fair hospital bill, this bill has not been paid.

For the record the case came on for trial in the District Court. After a discussion of the jurisdictional points of the case the Court dismissed the action as against Trasatlantica on the grounds that the petitioner had no action under the Jones Act and lacked the necessary diversity of citizenship to otherwise sustain his action on the civil side of the Court. This question of the application of the Jones Act as opposed to the law of the flag appears to be less at issue before this Court than the questions of civil jurisdiction. Sufficient testimony was taken to show that petitioner was a Spanish national and that Trasatlantica was a Spanish corporation and owned and operated the Guadalupe. Absent Jones Act jurisdiction petitioner had no rights at law, because there was no diversity of citizenship between petitioner and Trasatlantica. When petitioner's counsel refused to sever the actions against the three American corporations they were also dismissed because of the joinder of an improper party defendant. Petitioner's counsel refused the suggestion of the District Judge to sever the matter and proceed in admiralty against the Spanish Line.

On appeal the Court of Appeals affirmed. Consequently, one of the issues before this Court is whether the Jones Act conferred civil jurisdiction on the District Court. It is on this point that *amici curiae* urge that it is the law of the flag that should be applied to determine the rights of an injured seaman as against his employer, where the seaman signed articles in his own country, on a ship flying the flag of his own country and later, after the expiration of the articles at a port in his own country, con-

tinued to serve on the vessel. There is no claim anywhere on the record that Romero entered the service of the Guadalupe elsewhere than in Spain. He either signed articles in Spain and was serving pursuant to those articles or in the alternative the articles expired in Spain and he then continued to serve pursuant to some oral agreement reached while the vessel was in a Spanish port.

ARGUMENT

The law of the flag should apply.

As was stated in *J. Lauritzen* v. *Larsen*, 345 U. S. 571, 583, 73 S. Ct. 921 (1953), the test of location of the wrongful acts or omission, however sufficient for torts ashore, is of limited application to shipboard torts because of the varieties of legal authorities over the waters the vessel may navigate.

This Court has said that perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship by being responsible for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state (*J. Lauritzen* v. *Larsen, supra,* page 584). The petitioner here is urging this Court overrule *U. S.* v. *Flores*, 289 U. S. 137, 53 S. Ct. 580 (1933).

The Jones Act (Sec. 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688) which states,

> "That any seaman who shall suffer personal injury in the course of his employment may, at his elec-

> tion, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; * * * "

was an amendment of Sec. 20 of the Seamen's Welfare Act of March 4, 1915 (C. 153, 38 Stat. 1164, 1185, Title 46, United States Code, § 688), known as the LaFollette Act. Sec. 20 of this 1915 Act provided as follows prior to amendment:

> "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

In this manner, the fellow-servant rule as applicable to seamen was sought to be abolished. But this Court in *Chelentis* v. *Luckenbach S.S. Co.*, 247 U. S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918), held that Sec. 20 of the Seamen's Welfare Act of 1915, in attempting to abolish the fellow-servant rule, had imposed no additional liability upon the shipowner beyond the liabilities already existing under the General Maritime Law. This Court, while recognizing the right of the seaman to bring his action in the State Court under the "saving to suitors' clause" held that the seaman, by the abolishment of the fellow-servant rule, was given a right, but lacked the remedy to enforce that right.

Later, this Court, in commenting and passing on the constitutionality of the Jones Act, in *Panama Railroad Company* v. *Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924), in an opinion by Mr. Justice Van Devanter, wrote as follows with respect to the amendment of this Sec. 20 of the Act of 1915, at 264 U. S. 389:

> " * * * As originally enacted, § 20 was part of an act the declared purpose of which was 'to promote the welfare of American seamen.' It then provided

> that in suits to recover damages for personal injuries 'seamen having command shall not be held to be fellow-servants with those under their authority,' and in *Chelentis* v. *Luckenbach S. S. Co., supra,* p. 384, this Court treated it as part of the maritime law, but held it did not disclose a purpose 'to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore.' After that decision the section was reenacted in the amended form hereinbefore set forth as part of an act the expressed object of which was 'to provide for the promotion and maintenance of the American merchant marine.' "

Sec. 33 of the Merchant Marine Act of 1920, therefore, properly takes its place within the framework of the Act to which it was a partial amendment, i.e., the Seamen's Welfare Act of 1915.

The question to be determined is whether the expression "any seaman" as used in the Jones Act was intended to apply to the case of a foreign seaman injured aboard a foreign vessel in a United States port so as to give the foreign seaman a cause of action against his foreign employer without regard to the rules established by the law of the flag of the vessel.

The opinion of this Court in *J. Lauritzen* v. *Larsen, supra,* makes it quite clear that the expression "any seaman" is not to be taken literally. As stated by Mr. Justice Jackson at 345 U. S. 581:

> "Congress could not have been unaware of the necessity of construction imposed upon courts by such generality of language and was well warned that in the absence of more definite directions than are contained in the Jones Act it would be applied by the courts to foreign events, foreign ships and foreign seamen only in accordance with the usual doctrine and practices of maritime law."

A further answer is to be found by reference to the wording and context of the Seamen's Welfare Act of 1915. A section by section examination of the Act discloses that certain sections thereof were made specifically applicable to foreign vessels under certain stated conditions. With respect to the balance of the sections, the provisions were couched in terms applicable to United States vessels, but with no extension of their application to foreign vessels.

The Seamen's Welfare Act of March 4, 1915, known as the LaFollette Act, is entitled:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

The opening section of the 1915 Act amended Section 4516 of the Revised Statutes of the United States with respect to the requirement that a master of a vessel must sign-on, if obtainable, suitable seamen to replace those whose services have been lost by reason of desertion or casualty, and further provides that the master must report such losses to the "United States consul at the first port at which he shall arrive". This opening section is clearly restricted in its application to United States vessels by reason of the reference to United States consuls. It cannot be supposed that foreign vessels in foreign ports should report crew deficiencies to United States consuls located in those foreign ports.

Sec. 2 makes certain provisions for the division of the crew into watches, as well as for distinctions between work on deck and work in the engineroom. It also provides that no unnecessary work shall be done on Sundays or on certain specified holidays. This section, however, is limited in its application to "all merchant vessels of the United States of more than one hundred tons gross, excepting

those navigating rivers, harbors, bays or sounds exclusively * * *." Sec. 2 is clearly inapplicable to other than United States vessels.

Sec. 3 of the Act amended Sec. 4529 of the Revised Statutes of the United States with respect to the time for payment of wages to seamen on coasting voyages, as well as in the case of vessels making foreign voyages. In this section the terminology used is that "the master or owner of any vessel making coasting voyages shall pay to every seaman, * * *," and there is no indication that the section was to apply to foreign seamen serving aboard foreign vessels. The significance of this failure to refer to foreign vessels is pointed up when we examine the provisions of Sec. 4 and especially Sec. 11 of the Act. It might also be pointed out that foreign vessels are not eligible to engage in coastwise trade. Title 46 U. S. Code, Section 883.

Sec. 4 of the Act amended Sec. 4530 of the Revised Statutes of the United States with respect to the right of a seaman to receive on demand from the master of the vessel one-half the wages earned to that point at every port where such vessel loads or delivers cargo before the end of the voyage. The opening language of Sec. 4 states that "every seaman on a vessel of the United States shall be entitled to receive on demand * * *" and then outlines his rights. The closing portion of Sec. 4 reads as follows:

> "*And provided further,* that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This Sec. 4 therefore, stands out in relation to the three sections previously considered, in that Congress considered it necessary to include this specific provision in order to extend its terms to foreign vessels while in United States ports.

The terms of this Sec. 4 were fully considered by this Court in the case of *Strathearn S.S. Co.* v. *Dillon,* 252 U. S.

348, 40 S. Ct. 350, 64 L. Ed. 607 (1919), wherein Mr. Justice Day, in a unanimous opinion, held that the terms of the section were applicable to a British subject serving aboard a British vessel while that vessel was in a port of the United States. The fact that certain contracts which ran counter to the purposes of the statute were voided, did not render Sec. 4 of the statute unconstitutional as destructive of contract rights. Mr. Justice Day held that this Court had fully considered the matter in *Patterson* v. *Bark Eudora,* 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), and that there was no doubt as to the authority of Congress to pass a statute of this sort specifically applicable to foreign vessels in our ports.

Here all of Romero's earned wages were paid. The claimed cause of action for wages refers only to unearned wages accruing after the date of the accident (R. 201a). Such unearned wages have never been included under this Act. *Page* v. *U. S. A.,* 177 F. 2d 601 (C. A. 9, 1949); *Yoffe* v. *Calmar S.S. Corp.,* 23 F. Supp. 629 (D. C. N. D. Cal. 1938); *Underwood* v. *Isbrandtsen,* 100 F. Supp. 863 (D. C. S. D. N. Y. 1951).

Sec. 5 of the Act of 1915 amended Sec. 4559 of the Revised Statutes of the United States with respect to provisions for the handling of complaints by the officers or crew of a vessel while in a foreign port when the vessel was alleged to be in an unsuitable condition to go to sea. The wording of this section is that "upon a complaint in writing signed by the first and second officers or a majority of the crew of any vessel, while in a foreign port, * * * the consul or a commercial agent who may discharge any of the duties of a consul shall cause to be appointed" certain persons to examine into the cause of the complaint. In this section the expression "any vessel" is used, but there are no additional provisions extending the terms of the section to foreign vessels. In fact, it would be hard to imagine that Congress could have intended to regulate

the actions of foreign consuls or to have foreign seamen serving aboard foreign vessels present their complaints and problems to a United States consul in a foreign port for correction of the alleged deficiencies. Such an exercise of power by a United States consul in a foreign port with respect to a foreign vessel and foreign seamen would be totally out of line with basic theories of international jurisdiction.

Sec. 6 of the Act of 1915 amended Sec. 2 of the Act of March 3, 1897, as to the provisions for crew space and sanitary conditions aboard "all merchant vessels of the United States". This section was clearly not intended to apply to other than merchant vessels of the United States.

Sec. 7 of the Act of 1915 amended Sec. 4596 of the Revised Statutes of the United States and specified punishments for certain offenses as to "any seaman who has been lawfully engaged or any apprentice to the sea service." Here again, as to the terms "any seaman", there is no specific provision making the section applicable to foreign seamen serving aboard foreign vessels such as were found in Sec. 4, or will be found later in Sec. 11.

Sec. 8 of the Act of 1915, amended Sec. 4600 of the Revised Statutes of the United States and provided that "it shall be the duty of all consular officers to discountenance insubordination by every means in their power and, where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner." The expression "all consular officers" in Sec. 8 is as general as the expression "any seaman" found in Sec. 7 and later in Sec. 11, but here again it is clear that it was the intent of Congress that "all consular officers" meant only consular officers of the United States. As stated by this Court in *Sandberg* v. *McDonald*, 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918), at 248 U. S. 195:

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction."

Sec. 9 of the Act of 1915, amended Sec. 4611 of the Revised Statutes of the United States with respect to flogging and corporal punishment "on board of any vessel". No specific application to foreign seamen aboard foreign vessels is to be found in this section. The significance of the failure to extend its application is pointed up by referring to those sections where such an extension was made.

Sec. 10 of the Act of 1915, amended Sec. 23 of the Act entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce", approved December 21, 1898, 30 Stat. 755, 763, with respect to the daily requirements of water and butter. Here again, no attempt was made by the language of the section to extend its application to other than United States vessels or American Seamen.

In Sec. 11 of the Seamen's Act of 1915 we find a repetition of the situation existing in Sec. 4 of that same Act. The provisions are specifically extended to foreign vessels while in waters of the United States. Sec. 11 amended Sec. 24 of the Act entitled "An Act to amend the laws relating to American seamen for the protection of such seamen and to promote commerce", approved December 21, 1898. Sec. 24 of that Act of 1898 was, in turn, an amendment of Sec. 10 of Chapter 121 of the laws of 1884, 23 Stat. 53, as in turn amended by Sec. 3 of Chapter 421 of the laws of 1886, 24 Stat. 79. Sec. 11 of the Act of 1915 amended all these prior statutes as to the prohibition against paying "any seaman" wages in advance of the time when he had actually earned the same. Sub-section (e) of this Sec. 11 of the Act of 1915 reads as follows:

"That this section shall apply as well to foreign vessels while in waters of the United States, as to ves-

> sels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

Sub-section (a) of this section used the words "that it shall be and is hereby made unlawful in any case to pay any seaman wages in advance * * *." Yet, in spite of the use of the words "any seaman" Congress deemed it necessary to add sub-section (e) in order to extend the terms of this section to apply as well to foreign vessels in the waters of the United States. In other words, Congress did not believe that the use of the expression "any seaman" was in and of itself sufficient to require application to foreign vessels, even if those vessels were in ports of the United States. This Court concurred in that belief, for in *J. Lauritzen* v. *Larsen, supra,* the Court held that the words "any seaman" were not to be literally applied.

This situation finds an immediate parallel in the wording of the Jones Act which was, of course, an amendment of Sec. 20 of this same Seamen's Welfare Act of 1915. The opening language of the Jones Act reads, "That any seaman who shall suffer personal injury in the course of his employment may * * *." But there is no provisions contained in Sec. 20, as amended, applying that section to foreign vessels under any circumstances whatsoever.

If Congress had intended that the Jones Act should apply to injuries sustained by foreign seamen aboard a foreign vessel in a port of the United States, the necessary language was at hand for them specifically so to provide. It is significant that Congress added no such provisions.

In *Patterson* v. *Bark Eudora, supra,* this Court considered the effect of Sec. 24 of the Act of December 21, 1898, 30 Stat. 755, 763, to which Sec. 11 of the Seamen's Act of 1915 was an amendment, as described above. This Sec. 24 of the Act of December 21, 1898, similarly made

it unlawful in any case to pay "any seaman" wages in advance of the time when he had actually earned same. It further stated that the provisions of the section were to be applicable as well to foreign vessels as to vessels of the United States.

The case involved primarily a question of the power of Congress to enact such a provision applicable to foreign vessels. In the words of Mr. Justice Brewer, at 190 U. S. 173:

> "But the main contention is that the statute is beyond the power of Congress to enact, especially as applicable to foreign vessels. It is urged that it invades the liberty of contract which is guaranteed by the Fourteenth Amendment to the Federal Constitution * * *."

The Court held that the provision making this section of the Act specifically applicable to foreign vessels was constitutional and within the domain of Congress under the commerce clause of the Constitution.

Later, this Court considered the interpretation of this Sec. 11 of the Act of 1915 in *Sandberg* v. *McDonald,* 248 U. S. 185; 39 S. Ct. 84, 63 L. Ed. 300 (1918). This Court held that the provisions of Sec. 11 did not apply to advancements made in foreign ports to alien seamen shipping abroad on foreign vessels, pursant to contracts valid under the foreign law, in the following language at 248 U. S. 195:

> "Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

And later at page 196:

> "In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the

provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress."

For the reasons discussed above with respect to *Patterson* v. *Bark Eudora, supra,* the *Sandberg* case is equally undeterminative of the extent of the application of the Jones Act, since the *Sandberg* case also involved the interpretation of a section of the statute specifically extended to foreign vessels. It must be noted, however, that in spite of Congress' intent to make Sec. 11 applicable to foreign vessels while in waters of the United States, this Court held that the doctrine was not to be extended beyond the territorial limits of the United States both by reason of the statute and for reasons of common sense.

How then can we justify the application of the Jones Act to an injury to an alien seaman aboard a foreign vessel when the wording of the Jones Act contains no provision making it applicable to foreign seamen serving aboard foreign vessels under any conditions whatsoever?

Sec. 12 of the Act of 1915 repealed Sec. 4536 of the Revised Statutes of the United States and provided that no wages due or accruing to "any seaman" or apprentice should be subject to attachment or arrestment. Note that Sec. 12, as does Sec. 11, uses the expression "any seaman" and yet Sec. 12 contains no specific extension to foreign vessels. If a specific extension was required in Sec. 11 after the use of the expression "any seaman", then such a specific extension would equally be necessary as applied to the same expression when used in Sec. 12.

Sec. 13 of the Act of 1915 establishes certain requirements as to the number of the deck crew who are required

to have a rating of not less than A.B. and requires 75% of the crew of each department to understand any order given by the officer of such vessel. The language of this section is in the form of a prohibition, reading "that no vessel of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes and except as provided in Sec. 1 of this Act, shall be permitted to depart from any port of the United States unless she has on board * * *." Here again, no specific extension is made as to foreign seamen or foreign vessels, and, in fact, the subsequent language in Section 13 which provides that,

> "Graduates of school ships approved by and conducted under rules prescribed by the Secretary of Commerce may be rated able seamen after twelve months service at sea * * *",

indicate that this section of the Act was not intended to apply to other than American vessels, since Congress certainly did not intend that all foreign seamen were to apply for licenses and certificates from the United States Department of Commerce before being qualified to ship aboard foreign vessels. This failure to provide for foreign vessels is pointed up by reference to the following section of the Act, i.e., Sec. 14, where we find a specific application to foreign vessels leaving ports of the United States.

Sec. 14 of the Act of 1915 amended Sec. 4488 of the Revised Statutes by adding thereto specific regulations as to life saving appliances, the minimum number of davits and open boats, and, among other things, for a minimum number of certified lifeboat men. This section contains the following language:

> "Provided, that foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life saving applicances, their equipment, and the manning of same."

Here again, as was found in Sec. 4 and Sec. 11 of the Act of 1915, there is a specific provision as to the extension of the section to foreign vessels under certain stated conditions. It becomes increasingly obvious, therefore, that Congress was well aware of the fact that certain of these sections were to be applied to foreign vessels, whereas certain of them were not. Where language is found making specific reference to the application of a section to foreign vessels, then it must be concluded that such was the intent of Congress, and conversely, it must be concluded that, as to those sections where such a specific extension is omitted, it was the intent of Congress that no such extension be made. If that were not the case, then such wording would be mere surplusage and of no effect whatsoever.

Section 15 of the Act of 1915 provides that: "the owner, agent, or master of every barge which, while in tow through the open sea has sustained or caused any accident, shall be subject, in all respects to the provisions of Sections ten, eleven, twelve and thirteen of chapter three hundred and forty-four of the Statutes at Large, approved June twentieth, eighteen hundred and seventy-four," and further provided that the reports prescribed in those sections shall be transmitted by collectors of customs to the Secretary of Commerce, who shall, in turn, transmit them in summary form to Congress annually. Here again, no specific provision is made applying the terms of this section to foreign vessels, and we should bear in mind that if such had been the intention of Congress, then the language was readily available, for, as has been noted above, such language had already been used three times in the same Act.

Sec. 16 of the Act of 1915 "requested and directed" the President to give notice to the several governments that all treaties and conventions between the United States and such governments with respect to the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in

foreign ports and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States be terminated upon the expiration of certain specified periods. This request was also directed to "any other treaty provision in conflict with the provisions of this Act."

The Congressional Record bears witness to the prolonged discussion and debate which the provisions of this particular section evoked. On the one hand, Senator La-Follette of Wisconsin was urging upon Congress the desirability of the termination of such treaties, whereas Senator Burton of Ohio was the leader of the faction which urged a more moderate course. In the end, Senator La-Follette had his way, for Sec. 16 as finally enacted did call for the termination of such treaties. (Congressional Record, 63rd Congress, 1st Session, Vol. 50, Part 6, pages 5761-5792).

It is interesting to note that in spite of the urging of Senator LaFollette, from whom the Act of 1915 derives its name, the provisions of that Act were not made uniformly applicable to foreign vessels, but only certain sections thereof, and then only under certain specified conditions and situations.

Evidence of the reluctance in certain quarters of Congress to make even these specified sections applicable to foreign vessels is to be found in the Report of the House Committee on Merchant Marine and Fisheries. In commenting and passing on the proposed Sec. 4 of the Act dealing with half wages the Report states (House Report No. 851, 63rd Congress, 2nd Session, page 18):

> "The application of this section, however, to foreign vessels raises a serious question."

And later at page 20 of the same Report:

> "It should be stated that the Committee are not unanimous in making this provision apply to foreign ships.

Some members of the Committee doubt our right and the wisdom of making it apply to foreign ships and question its value to our merchant marine."

Sec. 17 of the Act of 1915 provided for the repeal of the various treaties designated in Sec. 16 upon the termination of the periods of notice required.

Sec. 18 of the Act of 1915 provided as to the time the Act was to take effect.

Sec. 19 of the Act of 1915 amended Sec. 16 of the Act of December 21, 1898, entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce," by adding thereto a provision that if "any seaman" incapacitated from service by injury or illness was on board a vessel so situated that a prompt discharge requiring the personal appearance of the master of the vessel "before an American consul or consular agent was impracticable," then such seaman himself was to be sent to a consul or consular agent who was in turn directed to care for him and defray the cost of his maintenance and transportation. Here again, although the section of the Act uses the expression "any seaman", it is obvious that it refers to seamen aboard American vessels, for it refers specifically to the requirement of a personal appearance of the master of the vessel before an "American consul or consular agent".

The next and last section, Sec. 20 of the Act of 1915, was the section which sought to abolish the fellow-servant doctrine as applied to seamen, and which was superseded and amended by the passage of the Jones Act in 1920.

If we consider the Jones Act within the framework of the Merchant Marine Act of June 5, 1920, of which it was Sec. 33, we are forced to the same conclusion that the expression "any seaman" was not intended to cover foreign seamen serving on foreign vessels.

The Merchant Marine Act of June 5, 1920, as has been pointed out above, was "An Act To provide for the promotion and maintenance of the American Merchant Marine * * * " and as such its provisions and sections covered the following subjects: the repeal of prior legislation with respect to appropriations for the Military and Naval establishments; the repeal of prior legislation with respect to charter and freight rates and to the requisitioning of vessels by the Government; the establishment of the United States Shipping Board; authorization for the sale or charter of Government-owned vessels to citizens of the United States; further authorization with respect to the sale of other property by the United States Shipping Board; provisions for the investigatory powers of the United States Shipping Board with respect to the operation of vessels by citizens of the United States; provisions for the carrying of all mails of the United States on American-built vessels documented under the laws of the United States if practicable; provisions for a limitation of the number of passengers to be carried aboard cargo vessels documented under the laws and flag of the United States; provisions stating that no merchandise shall be transported between points in the United States on other than vessels built in and documented under the laws of the United States and owned by persons who are citizens of the United States; all the provisions of the Ship Mortgage Act of 1920; a further amendment of the prohibition against the payment of advance wages, earlier mentioned, not amending, however, the specific provisions as to the applicability to foreign vessels within the harbors of the United States; and finally, the establishment of certain definitions as to the ownership of vessels by citizens of the United States.

In short, there is nothing in the Merchant Marine Act, of June 5, 1920, calling for any application whatsoever to foreign seamen serving aboard foreign vessels except for

the specific reference to foreign vessels in the amendment to the prohibition against advance wages. The balance of the Act is concerned with the machinery necessary for the establishment and operation of the United States Shipping Board and the operation, supervision, sale and purchase of vessels of the United States.

The report of the Senate Committee on Commerce made the following statement with respect to the aims of the Merchant Marine Act of 1920 (Senate Report No. 573, 66th Congress, 2nd Session, p. 2):

> "No interests but American interests have been kept in view. We are sure that other nations will look after their citizens and their needs, and if our business is to be cared for, we must do it."

If we look to the wording of the Jones Act, totally aside from its context within the framework of the Acts of 1915 or 1920, further evidence is found that Congress did not intend to include within its provisions foreign seamen serving aboard foreign vessels injured in our ports. The closing sentence of Sec. 33 of the Merchant Marine Act of 1920 reads as follows:

> "* * * Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

The use of the word "jurisdiction" has been interpreted by this Court not to relate to the general jurisdiction of the court, but to venue only. *Panama Railroad Company* v. *Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924). Even granting such an interpretation of the word "jurisdiction", however, this closing sentence of Sec. 33 makes it abundantly clear that Congress had in mind domestic employers and shipowners rather than foreign shipowners when it adopted this particular phraseology.

How would a foreign seaman proceed under the language of the Jones Act if his employer, the foreign shipowner, did not live in the United States and did not have his principal office located in the United States?

There may be isolated instances in which the defendant employer of the foreign seaman, while having his principal office located in the foreign country, may at the same time have an office in this country so as to allow the injured foreign seaman to start an action under the Jones Act in the court of the district in which such local office is located. But if we are to impute to Congress the intent to provide for foreign seamen serving aboard foreign ships under the terms of the Jones Act in spite of its language, then we must equally be prepared to admit that by the section as presently written, Congress has given only a partial remedy, since the majority of foreign seamen would find it impossible to comply with the jurisdiction and venue requirements as presently constituted.

If Congress had intended to give a remedy to the foreign seaman serving aboard a foreign vessel under the Jones Act, it could very easily have so provided by giving him an *in rem* remedy. With such a remedy available, the foreign seaman could have proceeded against the vessel upon her arrival in any United States port. It is significant that Congress did not make any such provision. A lien against the vessel is essential to every proceeding *in rem*, and no such lien arises by reason of the Jones Act in favor of an injured seaman. This Court specifically so held in *Plamals* v. *s/s Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928).

It has been argued by petitioner that the Jones Act should be applied to foreign seamen serving on foreign ships in order to close the gap alleged to exist between the operating costs of foreign and American shipowners. This argument is apparently based on a belief that such a con-

struction would indirectly subsidize the American Merchant Marine, and that as a result the burden falling upon the United States taxpayer would be lightened.

Petitioner ignores our national policy against indirect subsidies to shipping as shown by the Merchant Marine Act of June 29, 1936 (C. 858, 49 Stat. 1985, 46 U. S. C. § 1101), and the Congressional Reports.

Prior to the passage of the Merchant Marine Act of 1936, Congress had provided aid to American shipping in the form of lending money at low rates of interest to the American shipping companies for the purpose of building new ships for foreign trade. Congress had, in addition, appropriated large annual sums under the guise of payments for ocean-mail contracts. Petitioner now seeks to have the court construe the Jones Act as applying to foreign seamen in order to give American shipowners an additional subsidy. However, President Roosevelt, in his Message to Congress on the Merchant Marine Act of 1936, dated March 4, 1935, in speaking of the difference between the ocean-mail payments actually made and the reasonable cost of such service, stated (74th Congress, House Document No. 118, p. 2):

> "The difference, $27,000,000, is a subsidy, and nothing but a subsidy. But given under this disguised form it is an unsatisfactory and not an honest way of providing the aid that Government ought to give to shipping.
>
> *I propose that we end this subterfuge.* If the Congress decides that it will maintain a reasonably adequate American Merchant Marine I believe that it can well afford honestly to call a subsidy by its right name." (Emphasis supplied.)

More recent evidence of the policy of our government to avoid the indirect subsidy is found in President Truman's request made in August, 1952, to the Secretaries of Commerce and the Treasury to prepare reports on the existing

law offering tax deferments on shipping earnings as an added inducement to the setting aside of funds for new construction. President Truman asked for a plan to abrogate these tax benefits and establish some other financial assistance in the form of a direct subsidy.

It is submitted, that for the courts of the United States to attempt to reduce the burden of the United States taxpayer by subjecting foreign shipowners to higher insurance rates for personal injury coverage would be to resort to that very form of "subterfuge" which the Merchant Marine Act of 1936 was explicitly designed to avoid. The decisions of our courts have no place within this province.

According to present policy, foreign as well as United States vessels are subject to regulation by multilateral Conventions or treaties, rather than by unilateral legislation. The most recent example was the International Convention for Safety of Life at Sea, 1948, held in London. This Convention was signed in London on June 10, 1948, by the respective plenipotentiaries of the government of the United States and the governments of 27 other countries. The provisions of the Convention were submitted to the Senate on January 13, 1949, and were ratified without amendment or exception on April 20, 1949 (Congressional Record, 81st Congress, 1st Session, Vol. 95, Part 4, pages 4822-4825). Subsequently, on November 19, 1951, the fifteenth country deposited its ratification, and the Convention thereby came into force on November 19, 1952. President Truman, by proclamation dated September 10, 1952, proclaimed that the Convention was to be observed and fulfilled with good faith by the United States on and after November 19, 1952. The Convention was ratified by Spain on March 26, 1953.

This Convention provides, in brief, for all vessels to obtain from their own countries certificates of compliance with the requirements of the Convention with respect to:

life saving equipment, watertight bulkheads, double bottoms, load lines, stability tests, log entries, safety of electrical installations, fire protection and patrols, radio installations and the carriage of dangerous cargoes. Also promulgated were uniform regulations for preventing collisions at sea.

According to petitioner's principles of statutory construction, the same result should have been reached by extending American inspection statutes to cover all ships trading to the United States. That Congress and the President acted through the Convention is proof positive of our policy to steer clear of applying United States statute law to foreign vessels, but to accomplish the same aims through multilateral action calling for consent by all concerned.

Counsel for petitioner has stressed the alleged inequality existing between American and foreign seamen, and urges that th Jones Act should be applied since it is more liberal to the seamen.

Those are not valid arguments for applying the Jones Act to the factual situation here. This Court in *J. Lauritzen* v. *Larsen* at 345 U. S. 593 stated that such arguments were "brash" and "misaddressed". The real question is whether the Jones Act was by its terms intended to be applicable to a foreign seaman who is injured on a foreign ship in an American port after signing on a foreign vessel in a foreign port when that seaman admittedly has benefits to which he is entitled under the law of the flag.

Petitioner here is seeking furthermore to have this Court reconstrue the Jones Act. The Jones Act was enacted to give a seaman recovery for negligence. Prior to the Jones Act the seamen had no cause of action for negligence but only for unseaworthiness. *The Osceola*, 189 U. S. 158, 23 S. Ct. 483 (1903).

We submit that counsel for the petitioners is in error when he says that passage of Section 33 of the Merchant Marine Act of 1920, commonly known as the Jones Act, was "superfluous" with respect to the rights of American seamen. The fact is that absent that section American seamen would have no cause of action for negligence at all. Nor do we follow petitioner's argument that passage of the Jones Act on May 4, 1920 was the natural outgrowth of the decision of this Court in *Strathearn S.S. Co.* v. *Dillon, supra,* handed down 37 days earlier. The wage statute (Section 4 of Seamen's Welfare Act of 1915), discussed in the *Strathearn* case was by its terms made specifically applicable to foreign seamen on foreign ships while in harbors of the United States. The decision of this Court upheld its constitutionality. If there was causal relationship between the *Strathearn* case and the Jones Act, and if it was the intent of Congress in enacting the Jones Act to make it applicable to foreign seamen on foreign ships, we wonder why specific language was not included in the Jones Act similar to that to be found in the wage statute. The Jones Act was enacted on May 4, 1920 to fill a gap caused by the fact that this Court in *Chelentis* v. *Luckenbach Steamship Co., supra,* has held that Section 20 of the Seamen's Welfare Act of 1915 imposed no additional liability upon shipowners beyond those already existing under the General Maritime Law for unseaworthiness. The Jones Act amended that Section 20 so as to provide a remedy, which this Court had held did not previously exist. Petitioner's claim that passage of the Jones Act in 1920 added nothing to the rights of American seamen is wholly unsupported either by statute or authorties. All American seamen in our practice seeking negligence recoveries from their employees now sue under Section 33 of the Merchant Marine Act of 1920 and not under Section 15 of the Seamen's Welfare Act of 1915.

The intent of Congress in enacting the Jones Act in 1920 after the *Strathearn* decision was clearly to extend the

rights of *American* seamen; had foreign seamen been in the minds of Congress the Jones Act, like Section 15 of the Seamen's Welfare Act of 1915, would have specifically referred to foreign vessels.

Furthermore, under the Jones Act American seamen are granted recovery for injuries even though the vessel may have been in a foreign port at the time. *Farrell* v. *U. S.*, 167 F. 2d 781 (2 C. A.), affirmed 336 U. S. 511, 69 S. Ct. 707 (1949) (injury ashore in Sicily); *Cain* v. *Alpha S.S. Corp.*, 35 F. 2d 717 (2 C. A.), affirmed 281 U. S. 642, 50 S. Ct. 443 (1930) (assault aboard vessel in Venezuelan port); *Wheeler* v. *West India S.S. Co.*, 103 F. Supp. 631 (S. D. N. Y.), affirmed 205 F. 2d 354 (2 C. A.), cert. den. 346 U. S. 889, 74 S. Ct. 141 (1953) (injury ashore in France) *Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, 44 S. Ct. 391 (1924) (injury aboard vessel on an inland river in Ecuador).

Petitioner here would seek to reverse these holdings and leave American seamen to the benefits afforded by the law of the port, not the law of the flag. Such a restriction of the rights of American seamen is obviously foreign to the intent of Congress. If we are to hold that statutes such as the Jones Act are to be applied to foreign seamen aboard foreign vessels while in our ports it is only reasonable to expect that other nations may in turn enforce their own local statutes to events occurring aboard American flag vessels while in their ports. International commerce is a two-way street. Mr. Justice Jackson was well aware of the danger of such retaliation when he wrote in *J. Lauritzen* v. *Larsen* at 345 U. S. 582:

> "But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

Having examined the wording of the Jones Act, both within the framework of the Seamen's Welfare Act of 1915, to which it was an amendment, and within the framework of the Merchant Marine Act of 1920, in which it was enacted, we can see that this Court was on firm ground when, in *J. Lauritzen* v. *Larsen, supra,* it held that the words "any seaman" in the Jones Act were far from all inclusive and that the Jones Act was to be applied to "foreign ships and foreign seamen only in accordance with the usual doctrine and practices of maritime law". 345 U. S. 581. The provisions of the Acts indicate that when Congress intended any particular section to apply to other than United States vessels, a specific provision was invariably included. As a result no guesswork is required to determine what sections of the Acts are limited to United States vessels and what sections of the Acts are to be further extended so as to apply as well to foreign vessels under specified conditions.

Sec. 11 of the Act of 1915 which prohibited the payment of advance wages also used the expression "any seaman" in defining its applicability, but Congress did not feel that that alone was sufficient to extend to other than United States vessels, because sub-section (e) of that Sec. 11 called for specific application "to foreign vessels while in waters of the United States." If Congress had intended the Jones Act to apply as well to foreign vessels, then why was such a specific extension not included within its terms?

As stated by this Court in *Sandberg* v. *MacDonald,* at 248 U. S. 195, with respect to application of Sec. 11 to foreign vessels while in other than United States ports:

> "Had Congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

CONCLUSION

Wherefore, petitioners respectfully urge that insofar as the application of the Jones Act is concerned that this Court affirm the dismissal of the complaint as to the Spanish Line under the terms that petitioner's rights are to be determined by the law of the flag.

Respectfully submitted,

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